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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,157	01/17/2006	Daniel D'Amico	VALVO-40US	6437
26875 7590 03/17/2009 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
EXAMINER				
JOYNER, KEVIN				
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1797				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/544,157

Applicant(s)

D'AMICO ET AL.

Examiner

KEVIN C. JOYNER

Art Unit

1797

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-24 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-24, 26 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

FINAL ACTION

Election/Restrictions

1. Newly submitted claim 27 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The previous set of claims filed on June 2, 2008 were directed to an embodiment of the invention wherein the pocket members were triangular bars stretching over the entire width of the base strip, wherein claim 27 is directed to a separate embodiment wherein the pocket members are loops defined by a folded structure of the base strip. As such, the two differing claims are directed to distinct species that would require a different field of search and/or different classification.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 27 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 22, 23, 26 and 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hamilton et al. (U.S. Patent No. 5,968,633).

Hamilton discloses an air flow through air freshening member (column 2, lines 24-50) capable of being utilized for a vehicle cabin air circulating system comprising:

A base strip of porous material (column 6, lines 44-55; column 13, lines 27-38);

A plurality of individual pockets defined by a porous material and extending from said base strip at positions spaced apart from one another longitudinally along said base strip (column 5, lines 10-45; column 13, lines 15-35);

A particulate material (column 6, lines 12-31) having an air freshening substance releasably retained therein and held in said pockets (column 2, lines 24-50);

Wherein said pockets are spaced along said strip so that they are fully capable of fitting between the pleats of an air filter frame insertable into the vehicle cabin air circulating system as shown in Figures 3 and 7-10. Concerning claim 29, Hamilton also discloses that said base strip and said pockets are made from a common layer of porous material (column 5, lines 5-35; column 6, lines 44-55). With regard to claim 22, Hamilton continues to disclose that said pockets include bars having a triangular cross-section and extending over the entire width of said base strip, wherein said bars are capable of fitting between the pleats of a filter frame (Figures 1, 3 and 7-10). With regard to claim 23, the reference also discloses that the base strip is in the form of a continuous roll that is capable of being cut to a certain length to apply to a filter frame (column 10, lines 35-56).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton et al. (U.S. Patent No. 5,968,633) in view of Leseman et al. (U.S. Patent No. 5,080,957).

Hamilton is relied upon as set forth above, wherein Hamilton discloses that a particular application of the air freshening members is in conjunction with adhesive tapes (column 14, line 18), but does not appear to disclose how the pockets are bonded to the base strip as shown in Figure 10. Nonetheless, fusion bonding is extremely well known in the art. Leseman discloses adhesive tapes (column 2, lines 25-45) with a base strip and a plurality of pockets located on the base strip by a second material (Figure 1). Leseman continues to disclose that the pockets are fused to the base strip (column 4, lines 38-68) in order to adhere said pockets to said base strip, as such is conventionally well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Hamilton to fuse the pockets to the base strip in order to adhere said pockets to said base strip, as such is conventionally well known in the art as exemplified by Leseman.

6. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton et al. (U.S. Patent No. 5,968,633) in view of Wallart (Publication No. 2794405).

Hamilton discloses an air freshening member (column 2, lines 24-50) capable of being utilized for a vehicle cabin comprising:

A base strip of porous material (column 6, lines 44-55; column 13, lines 27-38);

A plurality of individual pockets defined by a porous material and extending from said base strip at positions spaced apart from one another longitudinally along said base strip that are capable of being coupled to a filter between a plurality of pleats (column 5, lines 10-45; column 13, lines 15-35); and

A particulate material (column 6, lines 12-31) having an air freshening substance releasably retained therein and held in said pockets (column 2, lines 24-50). Hamilton does not appear to disclose that the air freshening member is utilized in a manner such that the system further comprises an air filter frame having a plurality of pleats configured for insertion into an air circulating system. However, air freshening members are known in the art to be utilized with filters having pleats. Wallart discloses an example of this conventional teaching wherein the reference discloses a vehicle cabin comprising a filter (1) with pleats that is impregnated with an air freshening substance in order to simultaneously purify and provide a pleasant smell to the air in the vehicle cabin (abstract). Furthermore, the air freshener of Hamilton is provided with adhesive in order to adhere to a surface such as the filter; wherein one of ordinary skill would provide the air freshener in a manner such that the pockets are coupled between said pleats in order to ensure that said filtered air is also freshened. Thus, it would have

been obvious to one of ordinary skill in the art at the time of the invention to utilize the air freshening member of Hamilton with a vehicle cabin filter having pleats in order to simultaneously purify and freshen the air inside a vehicle cabin as exemplified by Wallart.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton et al. (U.S. Patent No. 5,968,633).

While Hamilton does disclose that said pocket members stretch over the entire width of said base strip, Hamilton does not appear to specifically disclose that said pocket members comprise bars having a rectangular cross-section. However, in *In re Seid*, 161 F.2d, 73 USPQ 431 (CCPA 1947), the court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. Accordingly, the claimed limitation is not considered to be patentably distinct from the disclosed air freshening member of Hamilton.

Response to Arguments

8. Applicant's arguments with respect to claims 22-24, and 27-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN C. JOYNER whose telephone number is (571)272-2709. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/
Primary Examiner, Art Unit 1797

KCJ